

**ENTERED**

June 30, 2021

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION**

HOLIDAY INN CLUB VACATIONS  
INC.,

Plaintiff.

VS.

T & G CORP., *et. al.*,

Defendants.

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CIVIL ACTION NO. 3:20-cv-00318

**ORDER**

ACI Architectural Concepts, Inc. (“ACI”) has filed a Motion for Leave to Designate Responsible Third Parties (“Motion for Leave”). *See* Dkt. 32. For the reasons identified below, the Motion for Leave is **GRANTED**.

**BACKGROUND**

Holiday Inn Club Vacations Inc.’s (“HICV”) predecessor-in-interest hired T & G Corp. (“T & G”) as a general contractor for its construction of the Ocean Club Resort in Galveston, Texas. ACI Architectural Concepts, Inc. (“ACI”) served as the construction administrator. In this lawsuit, HICV contends that T & G’s deficient work and failure to comply with project plans, along with ACI’s failure to properly conduct the construction administration and project oversight services, resulted in significant damages to the property. HICV brings causes of action for breach of contract and negligence against both T & G and ACI.

In the Motion for Leave, ACI seeks to designate five entities as responsible third parties under Texas law: (1) Matrix Spencer/The Matrix Design Companies, Inc.; (2) Shelmark Engineering; (3) Sterling E.G.O.C.; (4) PHA Consulting Engineers; and (5) PSI Waterproofing Consultants.

**ANALYSIS**

The Texas Civil Practice and Remedies Code provides that a defendant who is sued in tort or under the Texas Deceptive Trade Practices Act may reduce his

liability by a percentage of responsibility attributed to a responsible third party. *See* TEX. CIV. PRAC. & REM. CODE § 33.003(a)(4).<sup>1</sup> A “responsible third party” is defined as “any person who is alleged to have caused or contributed to causing in any way the harm for which recovery of damages is sought.” *Id.* § 33.011(6). The responsible third-party scheme under Texas law applies exclusively to actions based in tort or brought under the DTPA; a defendant cannot designate a responsible third party with respect to a contract claim brought against him. *See id.* § 33.002(a). Designating a responsible third party can affect the amount of a plaintiff’s recovery because a defendant “is liable to a claimant only for the percentage of the damages found by the trier of fact equal to that defendant’s percentage of responsibility with respect to the . . . harm for which the damages are allowed.” *Id.* § 33.013(a).

To designate a person as a responsible third party, a defendant must first file a motion for leave. *See id.* § 33.004(a). Once a defendant has moved for leave, a plaintiff may object “on or before the 15th day after the date the motion is served.” *Id.* § 33.004(f). Importantly, if the defendant properly designates a responsible third party by filing a motion for leave, the trial court must grant leave if there is no objection within 15 days. *See id.* Although ACI filed its Motion for Leave on June 4, 2021, and 15 days have since elapsed, HICV has filed no objection to the motion. Because no objections were filed, I am required to grant the Motion for Leave. *See id.* § 33.004(f) (“A court shall grant leave to designate the named person as a responsible third party unless another party files an objection to the motion for leave on or before the 15th day after the date the motion is served.”).

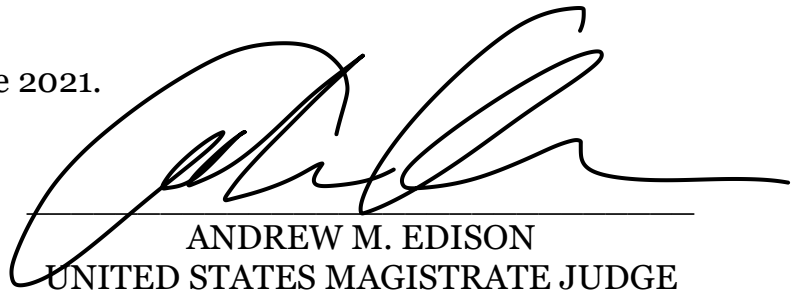
Accordingly, (1) Matrix Spencer/The Matrix Design Companies, Inc.; (2) Shelmark Engineering; (3) Sterling E.G.O.C.; (4) PHA Consulting Engineers; and

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<sup>1</sup> This provision “applies to federal diversity cases under the Erie Doctrine, as it is state substantive law and does not conflict with Rule 14 of the Federal Rules of Civil Procedure, the closest federal procedural counterpart.” *Gutierrez v. Tractor Supply Co.*, No. H-15-778, 2018 WL 3055752, at \*1 (S.D. Tex. June 20, 2018) (quotation omitted).

(5) PSI Waterproofing Consultants are designated as responsible third parties for which the trier of fact may consider for purposes of apportioning fault for the negligence claim.

SIGNED this 30th day of June 2021.



ANDREW M. EDISON  
UNITED STATES MAGISTRATE JUDGE